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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Peter H. Kang, Magistrate Judge

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION

NO. C 22-md-03047-YGR (PHK)

San Francisco, California
Thursday, June 20, 2024

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Thursday - June 20, 2024 **1:05 p.m.**

P R O C E E D I N G S

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THE CLERK: Please remain seated. Come to order.

Court is now in session. The Honorable Peter H. Kang presiding.

Now calling 22-MD-3047, In Re: Social Media Adolescent Addiction and Personal Injury Products Liability Litigation.

Counsel, when speaking, please approach the podium and state your appearances for the record.

THE COURT: Good afternoon.

ALL: Good afternoon.

THE COURT: So shall we walk through the status report?

The first issue that I see that requires my attention is the request for the issue about extensions for Meta's production of documents from custodians and the request for some limited extensions. Have you reached agreement on those or --

MS. WALSH: Good afternoon, Your Honor. Alexandra Walsh for the plaintiffs.

We are very close to agreement. We were just continuing our discussions in the hall just now, and I am hopeful that we will be there very soon.

THE COURT: Okay.

MS. SIMONSEN: Your Honor, I think -- Ashley Simonsen, Covington & Burling, counsel for the Meta defendants.

The other update we were going to provide to you today, Your Honor, is -- first of all, thank you for the leave to conduct additional negotiations regarding search terms.

The parties, as Your Honor knows, met in person last Wednesday, we met and conferred additionally on Monday and Tuesday of this week, made a number of counterproposals, and we're down to about three disputed search strings where there are --

THE COURT: I'm sure you can bridge that gap.

MS. SIMONSEN: And we're hopeful we can bridge that gap.

And so what we've discussed is seeing if we can do that; and if we can't, submitting letter briefs on any outstanding disputes by Monday.

We would ask if Your Honor is able to hear that dispute relatively quickly thereafter, simply because we do need sort of finality on the search terms, and wondered if Your Honor might hear that. And this relates back to the extensions. I'll get to that in a moment.

THE COURT: If it's limited to three search terms, I may be able -- depending on the nature of the dispute, you'll have to brief it, but hopefully it's something that I can just decide on the papers unless you really think it's something

that requires a hearing.

MS. SIMONSEN: Sure. I think --

MS. WALSH: Your Honor, again, Alex Walsh for the plaintiffs.

The only thing that I would add is that from the plaintiffs' perspective, the extensions that you reference as the first issue, there is a connection between that and the search terms.

THE COURT: Is that what you were getting to?

MS. SIMONSEN: Yes.

Okay. If I could just continue, the connection between the two is that Meta requested these extensions for its production of custodial files for certain custodians.

THE COURT: Right.

MS. SIMONSEN: For purposes of the 60-day production deadlines, Meta has been using its original search terms and its original relevant time period. Some of those 60-day deadlines have already come and gone using those, and so Meta's current plan -- was to produce the remaining custodial files that are returned by any additional search terms or expanded relevant time period by the September 20th substantial completion deadline.

In discussing with plaintiffs our request for these various extensions -- which would be extensions for the production of documents hitting, again, on Meta's original

search terms and relevant time period -- I understand plaintiffs thought this was clear sooner. I did not understand until a couple of hours before this hearing that they would condition their agreement to those extensions on Meta in turn agreeing that we would produce all additional custodial files, including for additional search terms and expanded relevant time period, within 30 days before depositions, which are now being scheduled for July at plaintiffs' election and coordination with the Tennessee Attorney General.

So that is now something that plaintiffs are linking to the search term negotiations, which is perfectly fine; but we'll need another couple of days, I think, to work through that issue along with the search terms.

MS. WALSH: And I would emphasize that we are attempting to work through it. We did have a -- quite a different understanding, which we've identified that misunderstanding now, and we would very much like to work through it because we -- it has been clear for quite some time that the search terms that Meta has been running were not search terms that we agreed were sufficient to return the documents responsive to our discovery request, which is why we've had all of these negotiations.

Those search terms are important to us. We believe they're necessary to obtain what we believe is discoverable information. And given all of our interest in moving forward,

not being duplicative, we would like the full custodial files, that is the custodial files, returned by the very close to agreed set of search terms before we take these depositions.

And we're very happy to limit it to the people who are coming up before September 22nd to a reasonable time before that, but it's important that we have those full custodial files as we go in to these depositions that are now scheduled.

In terms of the dates that are scheduled, as Your Honor knows, these are depositions that were noticed by Tennessee. We very much understand Your Honor's instruction regarding them, and it makes good sense to us. We have been working with Tennessee explaining the issues, including regarding these document productions. There's only so much we can do in terms of telling them when they need these -- when these depositions need to take place.

We're also cognizant of the discovery schedule for this case, and I believe that the reason Your Honor ordered the 60-day deadline was so that we would get these depositions going, which I think both sides are interested in. But, of course, it's problematic for us if forced to take these depositions without what we believe are the full custodial files for the deponents; and for that reason, we look forward to discussing with Meta and Meta's counsel how we can get those full custodial files just for those limited deponents in sufficient time to prepare for the now-noticed depositions.

THE COURT: It sounds like you're going to be talking about that. So the only guidance I'll give you is keep talking about it and keep making progress on it. I don't see -- I don't really hear a dispute here. It's just -- this is really just a timing issue is --

MS. SIMONSEN: Yeah. I think, Your Honor, the dispute -- I mean, just so Your Honor is aware, I mean, the additional search terms that Meta has agreed to over the past couple of weeks, after plaintiffs made movement, will add -- they'll increase the review population from an estimated 6.7 million documents to 13.7 million. It's a massive expansion of documents. We don't yet have agreement on those terms; hopefully we will within the next week. But the -- I think there is a deposition, for instance, that's been noticed for August 22nd.

There is simply just not a lot of time. We're still trying to get through all those documents for all the custodians in response to all the RFPs. There's simply not a lot of time.

Now, we have said to plaintiffs, and we took into account the September 20th substantial completion -- excuse me.

We did take into account, of course, the September 20th substantial completion deadline when we were negotiating these search terms. And we, just as much as plaintiffs, would like for these depositions not to go forward until our full

custodial productions are made.

But the deadline for those productions is September 20th, and that's what we've been working toward. I think we'd be open to rescheduling some of these depositions for after September 20th, as I believe was kind of the concept that Your Honor intended when Your Honor set that deadline with the idea that the parties would then have three months to take depositions.

I think the issue we're facing is just grappling with such a massively expanded universe of documents that we've agreed to and depositions that are coming earlier than the substantial completion deadline, but --

THE COURT: Once you run the new search terms, you'll know better than anyone whether the new -- after deduping whether the new search terms actually add materially to any one or two or three or four witnesses' documents. And it may be that they don't; right?

And so the only guidance I can give you there is run the statistics, especially after deduping, and see if there are individuals who have been noticed up, and you could adjust a schedule and get them done first.

MS. SIMONSEN: Will do, Your Honor.

THE COURT: Because it's a smaller universe of documents that just come up after --

MS. SIMONSEN: And we -- we, to be clear, have

committed to plaintiffs that we're going to prioritize the documents for any early-noticed depositions. So we'll continue to work with our client on it and confer with the plaintiffs.

MS. WALSH: Thank you, Your Honor.

And that's exactly the type of guidance we need.

Sorry. Alex Walsh for the plaintiffs.

And thank you for that guidance because that's exactly what we hope to discuss, which is what we're asking for, is these particular deponents who, respectfully, we cannot simply reschedule those depositions.

They are depositions that have been noticed by the Attorney General of Tennessee. And we're doing our best to coordinate and we have been able to coordinate, but there is a limit to our ability as plaintiffs in a different lawsuit, a different jurisdiction with different claims, to require the rescheduling.

And I know that the last thing we all want is for those depositions to go forward with incomplete custodial files, from our perspective; and our clients having been prejudiced in not being able to --

THE COURT: Yeah, I don't think either side from -- nobody wants the depositions to go forward with incomplete document productions ahead of time. So I think there's -- I don't hear a dispute there either.

I mean, at some level, since it's Meta's witnesses who are

being deposed, they're in the best position to negotiate the dates for rescheduling the depositions with the Tennessee Attorney General because, normally, if you-all weren't involved in the depositions, that's who you'd be negotiating the dates for the depositions with anyway.

So my only thought there is, if you can -- again, assuming everybody's acting cooperatively and reasonably, and understanding the Tennessee Attorney General's not here, but, again, you're in the best position to negotiate with them because it's your witnesses.

You say: Look, these five people, it's a relatively, you know, cabined universe of documents. We're going to get those produced by whatever date in July or early August -- whatever it is; right? -- and so let's do them first. I mean, I don't see why anybody reasonable would object to that, and so --

MS. WALSH: We would absolutely agree. We're looking for about four weeks prior to when the deposition takes place to give us --

THE COURT: I don't hear an objection to that in concept.

MS. SIMONSEN: Not in concept, Your Honor.

I think the difficulty is that the Tennessee Attorney General, there is no kind of 60-day custodial production deadline in Tennessee; right?

And the Attorney General of Tennessee has chosen to notice these depositions for particular dates, apparently understanding that they will not necessarily have all the documents.

The Tennessee Attorney General was the, I believe, lead coordinating counsel with the Colorado Attorney General in the presuit investigation. And I do understand that the deposition protocol that Your Honor entered did require coordination between, you know, these -- these plaintiffs and the Tennessee Attorney General.

And so, I think, just as we will absolutely work in good faith to identify which documents we might be able to get out the door sooner, if it is the case that we're not going to be able to do it by the dates of some of these depositions noticed by the Tennessee Attorney General, I think we would just appreciate if the MDL plaintiffs would work with us to work with the Tennessee Attorney General to push those depositions back so that we can ensure that we move those --

THE COURT: I'm not hearing an objection to that if it will ensure that you get the documents sufficiently in advance.

MS. WALSH: Your Honor, I'd make two points.

And having been involved in numerous discussions with folks from the Tennessee Attorney General's Office, I can assure you that we are -- as Your Honor has asked us to do, we are coordinating with them.

THE COURT: Yeah.

MS. WALSH: It remains the case that we cannot dictate the timing of these.

And in addition, Your Honor, we are cognizant of the close of fact discovery coming right up. So we, A, can't force the Tennessee Attorney General to delay these depositions. They have their own court to answer to, their own litigation strategy that they're following.

We also agree with Your Honor that -- and we very much appreciate the 60-day custodial file deadline so that we can get these depositions going so that we're not quadruple-tracking in the fall. We need to get these depositions going.

And in a world where many of these search terms that have now been agreed are search terms that we proposed to Meta as long ago as early April -- I recognize we are where we are -- but we're talking about a limited number of custodians. We're talking about search terms that they have been aware of for a long time. We would ask, Your Honor, that they make all efforts to ensure that we have full custodial files in time for those depositions to take place.

THE COURT: I'm not hearing an objection to that. The issue is trying to work out some flexibility on having to reschedule depositions if it becomes necessary.

All right. And I guess, again, since Tennessee isn't

here, all I can ask them, I guess, through you, is to be cooperative and work collaboratively even though they're not under my jurisdiction just, you know, as a matter of comity, I guess, or courtesy.

MS. WALSH: Yes. And we are -- please be assured that we are absolutely doing that.

THE COURT: All right.

All right. So, yeah, again, I'm not hearing a lot of dispute here, so I just encourage you to keep talking and work this out. It feels like it's something you should be able to work out.

MS. WALSH: And we appreciate the additional time Your Honor gave us and your admonitions because we've worked very well together and we --

THE COURT: I'm encouraged that you have --

MS. WALSH: -- will continue to do so.

THE COURT: Good. Good.

MS. WALSH: Thank you, Your Honor.

THE COURT: Okay. And then there was something about the extension on the privilege logs.

Have you reached agreements on that?

MS. WALSH: It's wrapped up in the same issue, Your Honor.

THE COURT: Okay. All right. Okay.

MS. SIMONSEN: I believe -- okay. Yeah.

THE COURT: Okay?

And the second group of anticipated deponents, that's all wrapped up in this as well or --

MS. WALSH: Yes.

THE COURT: Okay.

MS. SIMONSEN: I believe, just to clarify, that the privilege log issue deals with the privilege log productions for productions that already happened, and so it -- I don't think it should be wrapped up in this issue. And I understand you-all previous agreed to that extension.

MS. WALSH: I'm going to have to defer to my colleague on that, Your Honor.

(Pause in proceedings.)

MS. WALSH: Your Honor, if we can -- I think we can work this out with Meta's counsel.

THE COURT: Okay. Then so ordered. Work it out.

(Laughter.)

THE COURT: Okay. So I'm going to turn to ripe discovery disputes, unless there's something else in the sections prior to that in the status report I overlooked.

MS. SIMONSEN: No, Your Honor. Thank you.

THE COURT: Okay. So, hopefully, you saw just before the DMC, we issued the order on the six discovery letter briefs. So that's off my plate.

Do you want to talk about Docket 937, the letter brief on

limitations on RFPs?

(Pause in proceedings.)

MS. SIMONSEN: Apologies. I'm just getting to that place in my talking points here.

(Pause in proceedings.)

MS. SIMONSEN: Apologies, Your Honor. I'll have to pull it up electronically, but...

(Pause in proceedings.)

MS. SIMONSEN: Thank you.

Apologies, Your Honor.

THE COURT: No, no. You've got all these associates on your team, it would sure be nice to hear from some of them. You could have handed it off to one of your younger colleagues.

All right. So, I mean, I've read the briefing and I've read the further -- actually, on this one not a lot of further comments.

So I appreciate -- what is it? -- the plaintiffs' suggestion or their commitment, I guess, that they won't be serving additional document requests but with two reservations, as I understand that.

One is PI/SD plaintiffs reserve the right to serve additional RFPs on Meta for materials that fall outside the relevant time period; and, secondly, follow-up RFPs concerning new development facts or issues that come to light in discovery or otherwise.

So is there any objection to the PI/SD plaintiffs' position on that? I mean, that seems like a pretty nice concession for you-all.

MS. SIMONSEN: No, Your Honor.

I think at the end of our letter brief we said in the alternative to limiting the number of RFPs going forward, we would ask that you simply order the State Attorneys General to follow that same principle.

THE COURT: Okay. So -- well, Ms. Hazam stood up.

So you're just standing up to confirm that that's -- you're committed to that?

MS. HAZAM: I was. Thank you, Your Honor.

And that, to be clear, has been opposed by Meta to date, but we are very glad to hear Meta now --

THE COURT: Okay.

MS. HAZAM: -- being agreeable to that.

To make it clear, we don't necessarily think that is in conflict with the AGs' position, but I will let Ms. Miyata speak to that.

THE COURT: All right. So can the AGs agree to that same commitment by the PI/SD plaintiffs?

MS. MIYATA: Unfortunately, we're not in the position to agree to that same concession today, Your Honor.

And apologies. Bianca Miyata for the State Attorneys General.

We are -- we have been working diligently within the time frame and the schedule that was ordered by this Court, as well as Judge Gonzalez Rogers, but we are somewhat differently positioned from the private plaintiffs.

We filed our complaint in October of 2023, seven months after that group; and since then, we've been working carefully to ensure that the RFPs we do issue are not duplicative of any that have been issued by our colleagues.

We've issued a modest set of requests for production, but we are, simply put, a little bit behind in the time frame. We didn't receive Meta's first nine productions until May 20th. We didn't receive Meta's first sizeable production of documents until May 24th.

THE COURT: Let me ask. Are you -- on the plaintiffs as a whole, private plaintiffs, you're all getting the same document production from Meta? In other words, they're not separating out who's getting the documents based on which plaintiff group it is, are they?

MS. MIYATA: We should be now, Your Honor, but in the beginning of this year, we were not. So we did receive a sizeable catch-up production in the late half of May.

THE COURT: Okay. So if you're getting all the same documents that the private plaintiffs have asked for, or are asking for, doesn't -- I mean, I saw -- there was some -- there's certainly a disagreement between the parties. Meta

argued that a lot of your requests were duplicative of the PI/SD plaintiffs, and you said you took pains not to be duplicative.

I'm not going to read all the document requests --

MS. MIYATA: Sure.

THE COURT: -- but I'm assuming that to the extent they're duplicative, they're moot because you don't -- they've already been asked for.

MS. MIYATA: Correct, Your Honor.

And it's our position that they are not duplicative. And to the extent Meta believes they are duplicative, the proper procedure to resolve any disputes would be for us to meet and confer about those issued requests.

THE COURT: Okay. So there's a universe of document requests that are nonduplicative -- right? -- that you've been served already.

MS. MIYATA: May I follow up on that?

THE COURT: Yeah.

MS. MIYATA: So it's our position that all of the requests we have served are nonduplicative. I believe what my colleague referred to in the letter brief was a limited number of requests, which were 14 out of 108 in the most recent set, where, out of abundance of clarity, where there was seemingly similar subject matter, we did indicate "to the extent not already produced in response to" and then listed a PI/SD RFP.

So really that language was intended to take great pains to ensure that things are not duplicative.

We have not been part of all of the negotiations about the PI/SD plaintiffs' RFPs so we don't have insight into which of those requests may have been narrowed, revised, withdrawn, and what documents Meta has agreed to produce in response to all of those RFPs.

THE COURT: Are you talking to the plaintiffs' group as a whole?

MS. MIYATA: We certainly are talking to the plaintiffs' group, and some of those --

THE COURT: Then you would know which are withdrawn or narrowed; right?

MS. MIYATA: I'm sorry. I didn't mean to interrupt. Apologies.

THE COURT: That's okay. But you would know which ones are narrowed -- if you talk amongst your colleagues, you would know.

MS. MIYATA: We certainly do. But some of those negotiations took place before we were part of this litigation, and even before we were part of these conversations about whether or not our discovery would be linked to one another.

That was not clear from the inception of the case.

THE COURT: But it's clear now.

MS. MIYATA: Now it is clear. And, again,

understanding Meta's position, which was made clear to us at the end of May, that they do not wish for us to issue any additional discovery -- despite having six months left in fact discovery -- we began having those conversations, and also pushed out our next set of RFPs in an attempt not to sit on that later so that we could have those conversations and be -- you know, check every single T and dot every single I. But we do believe that the set we issued is not duplicative at this point in time.

THE COURT: Okay. So if you've already served, I think, two sets, if I'm remembering correctly --

MS. MIYATA: Two sets, that's correct.

THE COURT: Two sets.

And you're getting access to everything else that has been produced in response to the other plaintiff groups' document requests, why can't you agree to the commitment that the private plaintiffs are agreeing to?

Because you -- presumably, you've asked for just about everything you could want to the extent you differ from the private plaintiffs, and you're also getting everything that they've asked for as well.

MS. MIYATA: Not yet, Your Honor. We are still working with our experts to collaborate about what types of information would be critical to their assessment and analysis in this case.

And, I think, as Your Honor noted in the previous discovery hearing last month, review of documents leads to requests for more documents, depositions lead to requests for more documents.

Again, we have no intention -- and I think we've told -- we've told Ms. Simonsen this. We have no intention of issuing 700 additional requests for documents. We have every intention of being --

THE COURT: 700. 500?

MS. MIYATA: Not even 500, Your Honor. I can tell you that, not even 500.

THE COURT: 100?

MS. MIYATA: That, I can't necessarily commit to at this point. But we have every intention of being judicious, of avoiding duplication, of being targeted in our RFPs.

And we remain committed to meeting and conferring with Meta should they have concerns about issued sets of RFPs at this point. We have not had the opportunity to meet and confer with Meta regarding any objections they may be bringing to the second set of RFPs. Instead, we simply hear that their position is that no additional discovery served after May 31st should be considered or responded to.

But we don't see any -- we haven't had any conversations about their actual objections to those requests, the substance of those requests, how they may create additional burden, why

they're -- why they're disproportionate. We don't have any insight into that, and I think without those conferrals, this dispute is not really ripe for this Court to set a new deadline.

THE COURT: All right. So what -- putting aside future discovery requests, which -- we'll get to that issue in a bit.

What is it about -- is there anything problematic about the two sets that the State AGs have served to date?

MS. SIMONSEN: With respect to the first set, no, Your Honor; we did respond and object to those requests.

With respect to the second set, it is very duplicative of requests already served by the PI/SD plaintiffs. In fact, the State AGs invited us to tell them how their requests were duplicative of the private plaintiffs' requests rather than, in the first instance, ensuring that anything they were issuing was truly only additive on top of that.

Part of the issue with responding to this very duplicative set of requests this late in the game is we've already gone through extensive meet and confers with the private plaintiffs, all of which, Your Honor, the State Attorneys General were either invited to or attended. So I don't know what Ms. Bianca [sic] is referring to when she says these negotiations began before they entered the suit.

We did not start negotiating RFP responses until after the

Attorneys General were in this lawsuit. And they were invited to those discussions and, indeed, participated in some of them.

And so, for that reason, you know, they're -- they're essentially seeking a do-over of disputes that we spent a lot of time and energy working already with plaintiffs to try to resolve.

And so, you know, I think Meta might be willing, if the State AGs would withdraw their second set of RFPs and commit to serving what is truly a set of targeted, narrow, follow-up requests limited to issues that are actually unique to their cases, we could consider that. But it's just, at this late stage, with only three months to substantial completion, there isn't time to go back through this whole exercise over again.

And that's consistent with the representations the State Attorneys General made to Your Honor at the January DMC when they joined the personal injury and school district plaintiffs in asking for a trial, at that point, it was March of 2025, and in conjunction with that asked for a November fact discovery cutoff.

Your Honor ordered December, one month later. But the plaintiffs did commit to Your Honor that they would act expeditiously to get RFPs out; and Your Honor said you expected them to do so.

It's now four months later and the AGs aren't even committing that they're done with this second set of RFPs. I

just heard Ms. Miyata saying they're still working with their expert to put together a third, maybe even a fourth set of requests for production, which Ms. Miyata has also told me on meet-and-confer calls they are still working on additional requests for production.

THE COURT: Okay. So, first, someone on your team has gone through the second set of document requests and figured out which ones are duplicative? Are you telling me you've looked at them all and they're all duplicative?

MS. SIMONSEN: I believe, that that is the case, Your Honor, but I just am not close enough to it to be able to accurately represent to you today.

THE COURT: Okay. So -- all right.

So on that second set, to the extent you've got a good faith belief that, you know, some or all of them are duplicative of what the private plaintiffs have already served on you, you can -- you've got to file your -- you're going to serve your objections and responses anyway. You can't just not respond; right? And you can make that response, and that would trigger a discussion about whether there's anything leftover beyond the ones.

Because I will say, if they are duplicative and they can show the AGs that they are duplicative, then there's no reason for them to have been served.

Now, if they're not duplicative, then -- then they're not

and, you know, it's, hopefully, a much smaller number than we're talking about. And you can go forward from there and negotiate over scope and burden and all that. But you do have to engage on the ones that are nonduplicative.

Now, as to future document requests, you know, you did join -- I'm talking to the State AGs now -- you did join in the request for, you know, expedited scheduling and all that, so I'm -- if you start serving document requests in September-October, and Meta objects that, you know, it's burdensome in light of the discovery schedule, I might be pretty receptive to that kind of objection; right?

So if you've got -- if you've got planned a targeted set of follow-up document requests because of your experts say, "Oh out of the hundreds of requests that have been served, for whatever reason somebody missed something critical for their analysis" -- right? -- then you better get those out soon.

MS. MIYATA: I can assure you, Your Honor, we have no intention to continue issuing broad, you know -- broad sets of hundreds of RFPs into September or October of this year; but I think, as we've told Ms. Simonsen, we do intend to -- you know, we are still working and we're working with the time frame set by this Court.

And we understand that this request was raised by Meta in February to impose a particular deadline for issuing written discovery, and this Court denied that deadline and noted that

there was plenty of time to continue serving additional discovery.

THE COURT: With the -- with the admonition that you-all work expeditiously on this as well. So I don't want -- I don't want to have to keep coming back at, you know, the next two, three, four DMCs where the State AGs are serving more document requests.

MS. MIYATA: And we are doing so, Your Honor. We are working expeditiously, but we would have to object and push back on Meta's position that the deadline to do so can be unilaterally and retroactively moved backward.

THE COURT: I just told them they can't do that. So they're going -- they're going to go through --

MS. MIYATA: We appreciate that.

THE COURT: -- the second set and they're going to respond. But, you know, if they are truly duplicative, I'm going to expect you to withdraw them.

MS. MIYATA: And, Your Honor, we --

THE COURT: All right. I'll just let them stand on the objection.

MS. MIYATA: We understand that, Your Honor. And I think we have told Ms. Simonsen that we do not believe they are duplicative, and we stand ready to meet and confer about any concerns that they may have.

THE COURT: Okay. So when it comes down to the

granularity of specific requests, I'm not going to go through that with you here. I leave it up to your good offices to work out those details.

Putting aside, I'm going to say one more round of document requests because your experts say that we really need some targeted extra stuff that wasn't asked for, what -- if I give you that plus what the PI/SD plaintiffs are committing to, is that -- can you agree to that?

MS. MIYATA: May I have just one moment, Your Honor, to confer with my colleague? I believe we can, but I'd like to --

THE COURT: Uh-huh.

MS. MIYATA: -- base --

(Pause in proceedings.)

MS. MIYATA: Yes, Your Honor, we can agree to that.

THE COURT: Okay. So with respect to the PI/SD plaintiffs, I accept your proffer. If you want to get up and --

MS. HAZAM: Thank you, Your Honor. Lexi Hazam for plaintiffs.

One clarification of what I said earlier, that I don't believe will come as a surprise to Meta or any defendants, the school district bellwether plaintiffs do intend to propound a discrete, limited set of RFPs specific to themselves on defendants, as is typically done in these cases, as the

personal injury bellwether plaintiffs have already done.

We could not do that until their selection, which was relatively recent. And in this case, unlike in many cases, there is no school district defendant fact sheet. So we have no other way of obtaining information about communications defendants may have had specific to that district or promotions specific to that district.

So that is a discrete, small set that is still to be propounded that is not in the nature of, you know, broad liability discovery requests, but I wanted to make that clear on the record.

THE COURT: ETA on that set?

MR. WEINKOWITZ: Next week, Your Honor, by Wednesday.

MS. HAZAM: Mr. Weinkowitz just spoke and said by next Wednesday.

THE COURT: All right. Next Wednesday it is. So ordered.

MS. HAZAM: Thank you, Your Honor.

THE COURT: Okay. So all the plaintiffs are at a -- at least are committing that they won't serve further document requests except for they're reserving rights with respect to additional RFPs on Meta for materials that fall outside the relevant time period; and, secondly, reserve the right to serve follow-up RFPs on Meta to obtain materials concerning new developments, facts, or issues that may come to light in

discovery or otherwise; e.g., through press releases or congressional testimony.

And then there are two other specific objections. The SD plaintiffs have one more set by next Wednesday to serve.

And the AG plaintiffs have -- ETA on your expert-driven final set?

MS. MIYATA: Your Honor, we're doing our best. I hesitate to give you an ETA because that depends on some moving parts that are not entirely within our control. Experts we're working with, for example, are taking summer vacations. We have a couple of folks who may be on sabbatical. What I can tell you is we will be doing that as expeditiously as possible, and well in advance of the substantial completion deadline.

THE COURT: Two weeks from now?

MS. MIYATA: I don't think I can commit to two weeks.

Could we ask for 30 days?

THE COURT: Monday, July 15th.

And I just want to clarify, I understand, I think everybody -- and I think I've made reference to this -- we all understand that what happens at a deposition, somebody -- a witness mentions a document or two and I -- and then there's a follow-up request for one or two documents that weren't produced. I consider that to be the kind of follow-up discovery that comes to light during discovery. It's very normal. It usually doesn't require a new document request.

It's probably something that was already previously asked for but wasn't produced for some reason.

So I just want to make sure everybody understands, I view that as a kind of go-get-'em request that comes out of a deposition -- right? -- or the congressional testimony or something like that.

So, again, I'm not -- I don't consider those to be burdensome at all because it's just a follow-up of that kind; right?

So, Ms. Simonsen, I'm not going to grant you numerical limits or date cutoffs, but with those, I'll call them, category-type limitations, does that satisfy your concerns?

MS. SIMONSEN: That is very helpful, Your Honor. I think just, for the sake of completeness, we'll need to reserve the right if in 30 days we get something that is going to be really difficult to respond to in what will then only be two months left to substantial completion, we'll come back to Your Honor, but I think that's something that we can work with --

THE COURT: First, go to them and meet and confer about it.

MS. SIMONSEN: Yes, of course, first working with them.

Your Honor, there is one issue related to this, which is that, as you know, the parties have come close to reaching

agreement on search terms. However, the State AGs have taken the position that they should still have the opportunity to ask for more search terms in connection with their second set of requests for production.

Meta's position is that the deadline for search term negotiations was initially set for May 31st. Your Honor ordered that. Your Honor then permitted an additional three weeks for the Meta defendants and plaintiffs to continue negotiating search terms.

I understand that the AGs believe that that deadline applied to only already-served RFPs, but their second set of RFPs were served on June 7th. So they've had two weeks to introduce any new terms they wanted as a result of those requests for production.

They chose not to do so. We assumed that they were doing so, but learned on Monday that, in fact, they reserved the right to ask for more search terms down the road.

THE COURT: Have the AGs been participating in the meet and confers on search terms?

MS. MIYATA: Your Honor, if I may, we have been participating in these meet and confers, and we've made clear from the inception of these negotiations that we believe that they would apply -- as the parties presented in their statement in May, and as the Court ordered -- to already-served RFPs.

That was part of the language of the -- how the issue was

framed up, I think, to the Court. And that was also in the language of the Court's order, that the search term negotiation applied to already-served RFPs.

It would be somewhat nonsensical for us to insist on continuing to issue RFPs that would not be in -- encaptured or encapsulated by additionally negotiated search terms. That is to say, I don't think that there needs to be an entirely brand new universe of search terms of the breadth that we have been discussing, but we've made very clear our position, from the beginning, that the way that the issue was requested to the Court and what the Court did order, applied to the RFPs that were already issued; and that it makes little sense for Meta to simply run one collection of documents with one set of search terms, and then have -- have checked the box on their discovery obligation here.

THE COURT: But I don't understand. If you served a set of document requests --

MS. MIYATA: Yes.

THE COURT: -- after that order, but you knew, and the parties were still negotiating search terms, why didn't you propose search terms that would encompass your second request?

MS. MIYATA: We did propose search terms. And throughout these negotiations Meta's fervent position has been that the universe of search terms was too large, the number of hits returned was too large, and that that universe needed to

get narrowed.

And we hear them, and we take them at their word. But there was little opportunity -- that was in order to reach agreement, where all the parties could reach agreement, we agreed that we would set the question of whether this applied retroactively or forward looking to the side, and relied instead on the parties' joint language submitted in the May discovery management statement, as well as in the language of the Court's order, that this negotiation scope was limited to already-served RFPs.

A no point was it discussed on the record or placed in the Court's order that this negotiation should apply to search terms for all time for this very broad case brought by hundreds of private plaintiffs and 35 states.

THE COURT: Yeah, but we can't keep open the negotiations on search terms if you're going to keep serving document requests.

MS. MIYATA: Understood.

THE COURT: At some point it has to come to an end. And it's not going to come to an end in September; right?

MS. MIYATA: Understood, Your Honor.

And we do not intend to reopen the scope of negotiation that has happened at this point for, I think, what is collectively, between all groups of plaintiffs, perhaps, 800 and change, RFPs.

But we would anticipate that there will be a limited set of search terms that would be necessary to pull the documents that are unique in the second set of RFPs; and it is possible that with RFPs that are based on our expert collaboration, that there will be some additional search terms needed to pull those documents.

I think, inherent in the process of pulling from a limited set of custodians with a set of search terms is the fact that as the parties continue to do discovery, unless we're going to be strictly to go-get-'em requests, there will have to be some openness for negotiation to run new terms across the same universe of documents -- across the universe of documents that's been culled and pulled from the agreed-upon custodians.

MS. SIMONSEN: And, Your Honor, if I may respond.

I mean, I think Your Honor just articulated the type of targeted follow-up requests that would be appropriate which don't require reopening search terms.

The idea that we would, in a month, talk to the AGs about -- even if it's a limited set of search terms, those terms can be very broad. They can pull back a massive number of additional documents. It takes time just to process and load those documents and dedupe them against the, again, 13.7 million we've already agreed to pull back with the search terms we've agreed to.

And so they're just -- and I would just reiterate,

Your Honor, there have been two weeks since they served these requests on June 7th for them to ask for additional terms to cover those requests.

The parties' negotiations have been very dynamic. New search terms have been proposed. Meta has agreed to them. At --

MS. MIYATA: Your Honor --

THE COURT: I've heard from the AGs that they did propose search terms that would encompass their second request.

MS. MIYATA: We did.

MS. SIMONSEN: No, they did -- my understanding is that you need additional time in order to propose the search terms you would need for your second set of RFPs.

Do I have that wrong?

MS. MIYATA: In an abundance of caution, we did propose a number of search terms that we believed would touch on some of our RFPs; but the door was not open to -- I mean, I'll be very clear. Like, I do not believe the door was opened to the proposal of search terms that would encompass our second set of RFPs.

The parties -- I mean, I believe it's difficult because Meta can't, at the same time, say this negotiation is limited to what you've already propounded but at the same time, you should have proposed the search terms that would have encompassed what you have not already propounded. That's --

that puts us kind of between a rock and a hard place.

MS. SIMONSEN: We never said that the search term negotiations were limited to what they already propounded.

What we said was: Search term negotiations need to cover all documents that you reasonably think you need at this point in time, and that needs to be concluded by May 31st.

That was then extended three weeks.

MS. MIYATA: And they do need to be reasonably related. I mean, it was said that they needed to be reasonably related to already-propounded RFPs.

MS. SIMONSEN: And there were two weeks for the State AGs to --

THE COURT: Okay. Address your comments to me, not to each other.

MS. SIMONSEN: And there were two weeks for the State AGs to propose those.

THE COURT: All right. I considered the set -- the second set you propounded as part -- it should be part of the search term negotiation.

If you've got a set of search terms directed to your second set, you need to get the complete list and negotiate with Meta and get that finalized now -- all right? -- because they're finalizing, hopefully, those -- were there three other terms out there; right? And so you're -- the window's still open to negotiate on these, but work on -- work together on

that.

The other thing I would tell the AG group, presumably there are a lot of search terms from the other RFPs out there. You know, to some extent, I've got to believe that those search terms would hit on your second set of requests already. So be extra vigilant not to be -- to accept that an existing agreed-upon search term will address what you want. Okay?

MS. MIYATA: Yes.

THE COURT: All right.

MS. MIYATA: And we have been conducting those analyses, Your Honor, and keeping them in mind.

THE COURT: Okay. But I'm going to -- I'm just going to say: Wrap up in the negotiated search terms the -- all the document requests that have been served to date. Okay? To date.

And I just want to get the search term negotiation done -- all right? -- so they can start processing the documents and get them out to you-all -- right? -- because it's holding up the deposition scheduling. All right?

MS. MIYATA: Understood, Your Honor.

MS. SIMONSEN: And, Your Honor, I appreciate that.

I think it may be that if we're -- if we have to go back sort of to the drawing board with a number of additional search terms, that we may need a little more time to try to reach agreement.

I mean, we had a near global deal. We are at our capacity to get these documents out the door by September 20th as it is; and so if there are going to be a number terms now requested to be run, that requires seeing how they interact with the terms we've already agreed to, I just don't know if we're going to be able to wrap that up by Monday.

I think the AGs have had their opportunity, Your Honor; and I understand you want to give them a chance here, but they've had their opportunity to propose additional terms. At some point these negotiations need to come to an end, and we would like them to be wrapped up by Monday. And I just don't know if we can do that if the AGs are going to propose a lot of new terms.

THE COURT: Wrap it up by Wednesday. Okay? I'll give you until Wednesday.

All right. What I heard is AGs did propose some search terms to you, not their full set but some search terms directed to their second -- their second set of document requests. You can start looking at those if you haven't looked at them in detail. Really, you've got -- you made a lot of progress in just one week on the other search terms; right?

And how many additional search terms are we talking for the AGs?

MS. MIYATA: I'd have to go back and confer with my team, Your Honor.

THE COURT: Okay. In the single digits?

MS. MIYATA: Probably not in the single digits, but probably in the double digits.

THE COURT: Okay. In the teens?

MS. MIYATA: Not in the triple digits, I can tell you that.

THE COURT: In the teens or twenties?

MS. MIYATA: I'd have to go back and confer with my team, Your Honor. I'm not ready to put a number on the record here today.

THE COURT: How many document requests are in your second set?

MS. MIYATA: We had -- I believe we had 40 document requests in our first set. Those were quite modest. Those were merely cleanup requests from the investigation. And then we had 107 requests in our second set.

THE COURT: All right. If there are 107, I have to believe a lot of those are going to be satisfied or addressed by the existing search terms. Okay? So --

MS. MIYATA: And I believe some are, yes.

THE COURT: -- I'm going to encourage the AGs to minimize the number of additional search terms -- all right? -- and to work with Meta to negotiate those.

And, you know, discovery is not perfect and you're not going to get every -- nobody gets everything they want in

discovery. So if you have to compromise on it, I'm going to expect to see that.

And like I did in the order last week, if I'm seeing people are not being reasonable here, I'm going to make you come here and meet and confer in person in one of the closets. Okay?

MS. MIYATA: I wouldn't want that, Your Honor. I understand.

THE COURT: Well, that's -- you know, it's my prerogative. So --

MS. MIYATA: Fair.

THE COURT: -- I think I made the message clear last week about this. This is -- negotiating search terms is really something you should be able to work out, and you should be able to work it out quickly; right? Because you know what your document requests are. You can run the statistics quickly. Get it done in a few days. Okay?

MS. SIMONSEN: Thank you, Your Honor.

I do want to be clear about one thing, which is the State AGs did propose, apparently, some additional terms related to their second RFPs that we have considered in the context of the global discussions. And to the extent that they were required by the State AGs, they're in the list of 300-plus terms.

So it really, to my mind, should be a limited additional

set of terms, if any at all, particularly where -- just for Your Honor's awareness, we've agreed to run 25 terms that are just youth terms, like the word "teen," and it's hard to imagine how that wouldn't pull back anything potentially relevant in these cases.

THE COURT: So if I hear that it's more than, you know, a dozen or so additional terms, I'm going to start feeling like you're overreaching.

Do you understand?

MS. MIYATA: Understood, Your Honor.

THE COURT: All right. Because if you've already -- if they've already considered a bunch that you've already proposed --

MS. MIYATA: So I --

THE COURT: -- and there's already several, you know --

MS. MIYATA: So if I may push back on that just a little bit.

I believe that terms regarding subject matter that was already addressed in the private plaintiffs' RFPs, as well as in our first set of RFPs, are well encompassed in this set. I think there is a set of requests particularly with regard to financial matters in our second set of RFPs that is not encompassed and documented in the current set of RFPs -- in this current set of search terms.

So I want to be very transparent about the fact that I'm not certain that a dozen search terms will do the trick, but we will be very judicious and cognizant of the Court's advice to minimize the list of search terms we are proposing.

THE COURT: And I will say, you know, I'm not on summer vacation. I don't know if -- where your experts are on summer vacation, but they're reachable by phone. If there are specific --

MS. MIYATA: In part.

THE COURT: -- document -- if there are specific document requests and search terms that your experts tell you offline that there are absolutely critical -- right? -- that you think will be encompassed by your future last set of document requests -- right? --

MS. MIYATA: We'll be thinking of that as well.

THE COURT: -- get those to Meta this week. Okay?

MS. MIYATA: Understood.

THE COURT: All right. So I'm not limiting it to just what's been served; right? I want to make the search term negotiation as complete as possible so when it's done next week, hopefully you'll never have to come back to me on that issue. Okay?

MS. MIYATA: Understood, Your Honor.

THE COURT: All right. That handles Docket 937.

I'm going to take a short break so they can work on fixing

the echo in the interim.

MR. VAN ZANDT: Your Honor, can I make a quick comment on that same topic?

THE COURT: Sure.

MR. VAN ZANDT: My apologies. Joseph Van Zandt, co-lead counsel for the JCCP.

My apologies for standing there awkwardly for so long, but there was a comment made earlier in that discussion that was to the extent that the RFPs discussed here today would be the extent of the additional RFPs from all the plaintiffs. And I did want to clarify that, at least for the JCCP, we have a group of bellwether plaintiffs that will be selected next week, and we certainly intend on issuing plaintiff-specific RFPs to the defendants related to those plaintiffs that are selected in the JCCP, and certainly intend to do that through the JCCP court.

But I just didn't want to sit here and sit aside and -- with that being said and not clarify that.

THE COURT: Thank you.

I assume that's not a surprise, Ms. Simonsen.

MS. SIMONSEN: No, it is not.

THE COURT: Okay. So the JCCP -- are these individual plaintiffs?

MR. VAN ZANDT: Yes, Your Honor.

THE COURT: -- individual plaintiffs will also have

the ability to serve their set of requests.

MR. VAN ZANDT: Thank you, Your Honor.

THE COURT: Next week?

MR. VAN ZANDT: Soon after they are selected. They won't be finalized until the 27th, after the hearing with Judge Kuhl; and once the pool is finalized, those will be issued soon after they're selected.

THE COURT: But within a week after they're selected?

MR. VAN ZANDT: We will endeavor and do our best on that.

THE COURT: Okay. So --

MR. VAN ZANDT: Our goal is to issue them as soon as possible.

THE COURT: Okay. A week. And if you need to ask for a courtesy extension of that week, I'm sure Ms. Simonsen will give it to you.

MR. VAN ZANDT: Thank you.

THE COURT: Okay. So let's take a short break while they try to work out the IT issues.

THE CLERK: We're off the record. Court is in recess.

(Recess taken at 1:56 p.m.)

(Proceedings resumed at 2:05 p.m.)

THE CLERK: Please remain seated and come to order. Court is now in session. The Honorable Peter H. Kang presiding.

Recalling Multidistrict Litigation 22-3047, In Re: Social Media Adolescent Addiction and Personal Injury Products Liability Litigation.

THE COURT: Okay. Can you-all hear me okay without an echo out there?

People are nodding. Okay.

All right. Let's do Meta relevant time period, ECF Docket 888.

(Pause in proceedings.)

MS. SIMONSEN: Ashley Simonsen -- good afternoon again, Your Honor. Ashley Simonsen, Covington & Burling, counsel for the Meta defendants.

MR. CARTMELL: Good afternoon, Your Honor. Tom Cartmell on behalf of the plaintiffs. Nice to meet you. I don't think I've been before you before.

THE COURT: Thank you.

Okay. So, again, I've read the briefing and I've read the further briefing in the status report.

Well, before I -- why -- okay. Before I say anything, let me hear what Meta's -- if there's anything -- you don't have to repeat what you've argued. So anything to add? Or maybe you've already worked it out and have reached agreement.

MS. SIMONSEN: Unfortunately, we have not, Your Honor.

We did ask plaintiffs at one point if part of the agreement on search terms could be agreement to our expanded

relevant time period; and part of the reason is -- as Your Honor can appreciate, I'm sure -- if the relevant time period is expanded further, that multiplies the collection of documents beyond the -- I mentioned the figure already -- 13.7 million is what we estimate would be pulled back by the search terms we've agreed to so far over that extended relevant time period.

The one additional point I would just kind of throw out, Your Honor, is having learned today that the AGs will be presenting additional search terms, perhaps -- you know, maybe over 10 or more, you know, our original position on relevant time frame was 2015 as the start date. That is the date that the Attorneys General specified in their presuit civil investigative demand. Now, they did go back for a couple of other kind of targeted issues a little bit further.

I would submit, Your Honor, that 2015 is an eminently reasonable start date. It aligns with the general start dates that Your Honor has ordered for the other defendants, which I think are around 2015 or 2016.

Meta would still agree to go back to 2008 with feature-specific terms for any custodians employed prior to 2015. So they would get that feature-specific discovery going back to the launch date of any features launched before that time, but I think it would help a lot with the search term negotiations to have a little more room there in terms of

adding search terms if we could start at 2015, again, going all the way out to April 1st, 2024, consistent with Your Honor's prior rulings.

THE COURT: Any objection to that?

MR. CARTMELL: Yes, Your Honor.

With all due respect, we'd like to, with your permission, argue today, honestly, why we believe that our position that we offered in our negotiations is more appropriate and, honestly, why a relative time period that's based on features with a system that's set up that would have a new set of search terms based on -- specific search terms based on features is really not appropriate for this case.

And we've now -- we recognize your order, Your Honor. I haven't read it yet, but I know it just came, and I heard -- we heard what you said at the last -- at the last status conference.

I will say this: I think Meta is distinguishable, I think, from some of the other defendants for several reasons. I think that a feature-based relevant time period with a search term -- specific search terms that are feature based is going to be very severely, frankly, devastatingly limiting to our discovery that's important to us in this case in the early years. And what it does is for the first -- according to their interpretation of your order, for the first eight years, we literally -- after Facebook was brought to market, we literally

would get very little to none discovery during that period of time.

For the first four years, according to Meta, we would absolutely get no documents -- get a look at or discover any documents for the first four years.

For the next four years, from 2008 to 2012, they want to do a specific search term by feature. And we believe that the search terms that we have not received yet -- so we're talking about receiving, probably, nine sets of new search terms over time, and it's -- we think that's very unworkable for a whole host of reasons as well.

But specific feature search terms, we've had the chance to look at documents -- I think we're unique a little bit from the other defendants on that point. And the way that the company is chatting within the company is not talking in terms of those features. And I think, according to Meta, they're saying that very relevant key documents that we believe exist -- and, in fact, we have some evidence that do exist -- would not be produced to us in that situation. I want to give you a few examples.

But you asked other plaintiffs' attorneys at the last hearing why do we need to go back so far, and so very briefly what I would say is that, Your Honor, we have a negligence claim in the JCCP; a negligence claims in the MDL that has not been ruled on; and a failure to warn claim here. We also have

a punitive damage claim that I think -- I wanted to emphasize and emphasize the negligence claim in the JCCP because I don't think it was necessarily by Meta -- I know in the brief or last time.

But our claim is that they designed -- not only designed but implemented, administered, their platforms in a way that cause kids and young adults to become addicted, problematic use, addicted use, and then that resulted in all the harms.

Our claim is that they knew or they should have known -- our negligence claim -- that the way they designed and implemented and administered and monitored and supervised -- not just designed -- their platform, that they should have known would have resulted in that, and in fact, they did. And their motive and intent -- from the very beginning at Facebook, their notice and knowledge about problems with kids -- about kids from the very beginning at Facebook, are extremely relevant in this case.

And I would argue were distinguishable, the Meta case, from the other defendants in some regards because they've been around so long -- right? -- and it turns out that there is a lot of information in the public domain.

We brought up for you, Your Honor, Sean Parker, the first president of Meta, who made a statement in 2017 about the development of Facebook, and he said at that time, and I think it's very important (as read):

"The thought process that went into building the application, Facebook being the first of them, was all about: How do we consume as much of your time and conscious attention as possible?"

And then he goes on to talk about how "We had" -- "We talked about how we had to give kids a little dopamine hit." And he talks about that it was himself -- and he names Mark Zuckerberg specifically -- who knew what they were doing when they did that.

And so in this case, unlike some of the others, just because they haven't been around as much or for as long, we have, in the public domain, evidence we believe that it's extremely likely that at that time period starting at Facebook -- he's talking about the 2004 and 2005 time period when Mr. Parker was involved in the invention -- they were talking about these things.

And according to Meta's proposal, those types of conversations that were happening, we would be unable to discover; we would be unable to, you know, get that probative, obviously, evidence that's, you know, extremely important to our case. Their -- the way it's set up right now, for seven years we wouldn't be able to get any of those documents.

And a few other points that I want to make. We have plaintiffs in the bellwether cases in JCCP that are from -- using Facebook from 2006, mid-2000s, currently. And so I think

that's a distinguishing factor, a factor from the others as well.

So I think the other thing is that our claims are not all feature based. You know, our claims are in some respects -- for example, with age verification -- and there are some -- some dispute between some whether age verification, for example, is a feature or not. But our claim is, in our pleadings, from the inception of Facebook, their age verification was inadequate.

Our experts are looking for documents during the relevant time period when Facebook came out, when they decided in 2005 that they were going to open up Facebook, not just to college kids but to high school kids, and then in 2006, when they decided that they were going to open it up to everybody other than those under the age of 2013, [sic] if there were conversations and documents at that time talking about whether they were looking at alternative types of -- or feasible types of age verification or parental controls at that time, we think that period of time is extremely relevant for us.

And the other thing is, it's not a secret that when we try this case or when -- you know, when -- it's not a secret what our claim is; that we are claiming that Meta lit the match that started the fire that ended up in the mental health problems with kids. So we're claiming that they lit the match when in 2005 and 2006, they decided to allow everybody 13 and up on

this -- on this platform.

The other reason that I want to, real quickly, say that I think that in this specific instance, because of the status of the case and because of the Court-imposed deadlines that we have that were talked about previously and keeping in line with those, I think a feature-based relevant time period with new search terms -- because what we're talking about is now going and negotiating -- I think it's nine if we look at all the features that -- and we don't agree at this point what features are at issue, but I think it would be nine.

So, for example, if Mark Zuckerberg was involved in all of the feature development, inventions, things like that, then they would run, according to Meta's interpretation, for each of the nine features they would have a different set of feature-specific terms that they would run; and then they would run, according to them, from 2012 on, against all of our terms that we've agreed on.

So -- so you're talking about us negotiating I think nine more times on search terms that we haven't received yet, and -- and also for our claims which are not feature based and for documents that -- that will not be picked up, relevant documents that won't be picked up if the term of the feature is not in there.

For example, if -- if there's a document that says, "Hey, we're seeing a lot of kids on our platform at this point," and

that's to Mark Zuckerberg and the response is, "Well, you know, we need to storm forward and, you know, we're not going to do anything about that or change it," that's not going to get picked up.

According to Meta, the only way the documents that are relevant for eight years following the time that Facebook was -- was designed and developed and over time continued to be developed and the time period that they were implementing it, we won't get any documents if they don't name the exact feature.

For example, Sean Parker's -- if you look at his statements, if we ran Sean Parker's statements, it would be picked up, it would be relevant from the 2012 search terms because he says in the statement "We don't know what we're doing to children's brains," and we've negotiated "children's" as a search term so it would be picked up.

But in 2004 until 2012, according to Meta's belief what should happen here, those kinds of statements would not be picked up because they don't name a specific platform.

So, you know, we feel strongly that our offer and what should happen here -- and we think we took into consideration, Your Honor, proportionality, the needs of the case, as well as the need for us to get relevant discovery for those first seven years by offering -- we have 127 currents custodians, and from 2010 on, we'll run our search terms that include "youth"

and "kids" and "children" and "bullying," and harms that are at issue in the case that also talk about, you know, the relevant claims that we have related to age verification and other things.

And for six, only six, custodians would we ask that we get their custodial files and we run the full search terms that we've agreed on. That would include Mark Zuckerberg, who nobody can argue is not extremely relevant in this case; and other individuals who were there at the time talking with Mark Zuckerberg about the development of these -- of the platform for Facebook: The chief engineer at that time, the VP of product -- of the product development at that time.

Just six. I don't think that the burden with that is much different than what they're offering, and it allows us to do it more efficiently. We don't have to continue to negotiate for weeks to a month nine new sets of search terms. We can get the depositions going, and it protects our ability to get the discovery during the key period of time from that first seven to eight years when we think that's one of the most important times for our case, Your Honor.

MS. SIMONSEN: Thank you, Your Honor. Ashley Simonsen for the Meta defendants.

At the prior discovery hearing Your Honor ruled that -- you said (as read):

"I'm not going to grant anyone blanket discovery

across all features for all time for just one giant time frame. I'm going to basically trigger that discovery based the date that each individual feature was launched."

And the approach that we've proposed is consistent with that.

This case is -- predominantly it's a product liability case. It's based on plaintiffs' challenges to 20 or so specific features that were specifically enumerated in their complaint and that Judge Gonzalez Rogers analyzed on a feature-by-feature basis in her motion to dismiss.

And so for that reason it makes sense. Plaintiffs are going to get -- if we go back to 2015, they're going to get nine years of general discovery. They've not said they won't get documents over that nine-year period touching on the motivations of the company to increase users or the amount of time that users spend on the platforms. They've not articulated a reason why they need to go all the way back to 2004 before they, you know, concede even any of the bellwether -- any of the plaintiffs at all were on the platforms for that kind of general discovery.

And I would note, too, that I heard my colleague say that based on this Sean Parker statement, that we wouldn't get a document talking about children's brains. Well, one of the features that we've agreed to go back in time for is

algorithmic recommendations, recognizing that it was in 2009 that there was a shift from the chronological feed to the algorithmically driven feed that is the type of algorithm that the plaintiffs are challenging in this case. If there's a document talking about the impact of that challenged feature on children's brains, it will be returned.

On just a few other additional wrap-up points, Your Honor, we can share with plaintiffs the list of feature-specific terms that we propose to run. They actually already have them because at the outset of our search term negotiations, we proposed a set of feature-specific terms. There's only, I think, one feature, which is the -- the Facebook friend recommendation feature where there's -- there was kind of one narrow, earlier iteration of that where we would -- we would propose running just a narrower term. But we can share those with plaintiffs, and we can kind of work them out between now and Wednesday, as apparently, we're going to be doing with respect to the State AGs' new terms.

I also wanted to point out, since my colleague mentioned, you know, when the plaintiffs have been using these platforms, that the bellwether plaintiffs did not begin using these platforms, as I understand it, until 2011 and '12. And so to the extent that that is relevant to what the relevant time period should be for company discovery, I'm not sure it is, but since my colleague brought it up, I think it's relevant -- I

think it's worth mentioning that to Your Honor. There may be some plaintiffs in the pool who used the platforms earlier than that, but the bellwether plaintiffs, it was much -- it was much earlier.

Let me make sure there's nothing else I want to point out.

(Pause in proceedings.)

MS. SIMONSEN: I think that's it, Your Honor.

I get just on the point about nine features, only -- they think there are nine features, I guess, for which we would have to go back in time. We're very forthcoming with plaintiffs. We shared with them, based on our investigation, the launch date for all of the features for both Instagram and Facebook. We ultimately identified for them five features for which we would go further back in time because they were launched prior to 2011.

So, now, if we -- if we start the general time period at 2015, we, of course, would look at adding feature-specific terms for any features launched between 2012 and 2015.

MR. CARTMELL: Can I just say one thing? I apologize, Your Honor.

THE COURT: Yeah.

MR. CARTMELL: Real quick, because I meant to say it and my colleague reminded me.

Our failure to warn claims, you know, are not feature specific. They're failure to warn of the harms, potentially,

that could exist, as the surgeon general said.

And I'll just leave it at that for now.

THE COURT: Okay.

MS. SIMONSEN: If I could just very briefly respond on that to say that Judge Gonzalez Rogers analyzed that claim on a feature-by-feature basis. So I think the way that the Court is looking at that claim is on a feature-by-feature basis.

THE COURT: Okay. So the way -- I mean, consistent with the ruling at the previous hearing, my discussion at the previous hearing, I -- in my mind, there are kind of two categories or universes of document discovery we're talking about here, which is kind of the technical implementation, planning documents for specific features, and then there's kind of the general discovery that we're talking about.

So I do continue to believe that discovery with respect to specific features should be triggered by the date those features were developed and released.

So on the five that are in the status report, feature discovery on Facebook friend recommendations can start as of January 1, 2008; Facebook algorithmic recommendations starts as of January 1, 2009; Facebook endless scroll starts January 1 2009; Facebook geolocation starts January 1, 2010; the Facebook notifications starts January 1, 2011.

There is a dispute between the parties about Facebook newsfeed, and this goes to something that I think I alluded to

in the order that was issued today. To the extent the parties are disputing whether a particular feature is actually at issue in the case or not, I mean, to some extent it's the plaintiffs' theories to put them in the case; and so if -- I take it your position is the newsfeed is in the case?

MR. CARTMELL: Yes, Your Honor. Paragraph 195 of our complaint specifically states that.

THE COURT: Okay. So discovery on Facebook newsfeed starts as of January 1, 2006.

MS. SIMONSEN: Your Honor, may I respond on that point? Because it is important, it actually goes to the algorithmic recommendations point.

The plaintiffs have defined named features the same way in all 13 sets of their requests for production, and they map onto the allegations of the complaint.

The newsfeed, to the extent that's a challenged feature, what plaintiffs are challenging is the algorithmic recommendations appear -- the way the algorithm recommends content to users.

In plaintiffs' complaint, they focus specifically on what they refer to as engagement-based ranking algorithms. So they allege in their complaint that 2009 marked the change from chronological to algorithmic ordering for the Facebook newsfeed; and that in 2009, Meta did away with Facebook's chronological feed in favor of engagement-based ranging. In

2016, it did the same on Instagram.

So January 1st, 2009, based on this features approach is the earliest date for which discovery into that feature, which is not newsfeed but algorithmic recommendations, that's the earliest it should go back to. Because prior to that time, it was a chronological feed the same type of way you might see content on any website, and that's not what plaintiffs are challenging. They're challenging the specific design of the algorithms used to rank content in a way they claim is addictive. So we're just going on what they've alleged.

MR. CARTMELL: Your Honor, what we alleged was that there were multiple features -- actually, what we alleged was the platform as a whole was designed improperly, and then we have a whole lot of different -- and I want to bring up other -- other features that are in there.

With new -- with the newsfeed it -- paragraph 195, we specifically said this was the first feature that was designed to keep people on the actual platform for the maximum amount of time. I mean, it's central to our case, and that's when it started.

THE COURT: Okay. So I think they've articulated at least a reason why it's relevant to discovery -- for discovery purposes going back to January 1, 2006, and I can -- at the last hearing on this similar issue with other defendants, I believe there was an argument plaintiffs made that it goes to

alternate designs as well, and alternatives available. So it's going to go back -- for newsfeed, it's going to go back to January 1st, 2006.

You had -- there was discussion about age verification --

MR. CARTMELL: Yes.

THE COURT: -- which is not one of the features listed here, unless it's subsumed by one of these. I want to make sure. If it isn't, I want to address that since you raised it.

When do the plaintiffs allege that age verification becomes relevant for your case?

MR. CARTMELL: In 2006. That is when they made the decision that they were going to allow 13-year-olds and up actually on the platform. Our experts have an opinion that at that time, based on those circumstances, that would be relevant.

THE COURT: So as to age verification, same thing. Discovery starts on that feature as of January 1, 2006.

With regard to the general time frame for all other nonfeature-specific discovery, you know, I preface it by saying: If plaintiffs can find targeted document requests based on other evidence that something preceding this -- because it is a default cutoff -- that something preceded should be sought in discovery -- I note the Sean Parker quote is from 2017, so -- I mean, but if you've got evidence that there is a document that precedes the default cutoff that I'm

going to impose, you can certainly -- you know, the default can be overcome if you've got an evidentiary basis or a basis to find something specific. All right?

But I'm not going to -- as I said before, I'm not going to have kind of a broad early, early, early default discovery date because at some point in time it starts getting -- it starts getting unproportional I believe.

So I note that in the status report it was reported to me that the AGs confirmed on May 16th that for many of the State AGs' request served to date, 2012 is the relevant time frame. So the default cutoff date is going to be January 1, 2012, based on that.

MR. CARTMELL: Your --

THE COURT: Go ahead.

MR. CARTMELL: Your Honor, we have other -- multiple other features that are in our pleadings that we -- for example, the "like" button. There's been an argument by Meta that the "like" button is not included, but it's clear from a page and a half of our pleadings that we're claiming the "like" button is one of those things that gives a dopamine hit that keeps kids on the platform.

THE COURT: Do you have a date for the "like" button?

MR. CARTMELL: 2009.

MS. SIMONSEN: Your Honor, again, the "like" button is not a named feature. It is not a feature that

Judge Gonzalez Rogers analyzed in her decision. What she addressed was the timing and clustering of notifications, including notifications of "likes." And notifications -- the time frame for notifications on Instagram, for instance, is 2012 is when that feature launched.

And there will be certainly discovery going back to 2012 about the "like" button. To the extent it's relevant to this case, it relates to notifications and those began in 2012.

MR. CARTMELL: Your Honor, again, the JCCP the "like" button is at issue, and the proceedings and rulings here affect the discovery in the JCCP. The "like" button is obviously in that case.

And, also, the judge has said -- and I think you have also confirmed -- that all of the features in -- and it actually says in the pleadings, it may say "complaint," are at issue in the case.

So that's one thing that I think the reason is there's some disagreement here, is they are using a definition in our RFPs that defined seven or eight things. We have multiple others, like features -- excuse me -- like the "like" button in our pleadings, and I think the pleadings have -- and the judge has ruled the pleadings would actually control in that situation.

And so there's several others that -- that, you know, have not been mentioned; but we've always taken the position: Well,

wait. If they're in our pleadings, you're put on notice and we're telling you that they contribute to the addiction or problematic use or compulsive use of kids.

THE COURT: I mean, the question is: Why didn't you include them in the definition of named features, though?

MR. CARTMELL: Well, our -- I think some of them would be subsumed within those definitions, okay, individually.

THE COURT: The "like" button January 1, 2009. You got that.

MR. CARTMELL: Okay.

THE COURT: Are there others?

MR. CARTMELL: Yes, there are others, Your Honor.

THE COURT: What else do you -- what else do you need?

MR. CARTMELL: We have Facebook Chat in April 2008. We have --

MS. SIMONSEN: Your Honor --

MR. CARTMELL: Can -- I'll just read the list --

THE COURT: Yeah.

MR. CARTMELL: -- and then Ms. Simonsen can respond.

We have hashtags in January 2011.

We have facial recognition tagging in December 2010.

We have parental controls. And, Your Honor, that is another -- from the inception of -- of Facebook, our experts will opine that when they decided in 2004 to allow 13-year-olds to 18-year-olds onto their platform, was there discussions

about any parental controls, getting permission from parents, things like that? That's a central part of our case in this. So parental controls in our -- in our belief is, that that would be 2006, when that happened.

Then before 2010, we have CSAM reporting protocols.

Geolocation -- actually, CSAM was in 2010.

Geolocation was in 2010.

And I don't remember if Ms. Simonsen said friend recommendations in May of 2008.

THE COURT: Friend recommendation is already there.

MR. CARTMELL: Okay.

THE COURT: All right. Do you want to respond?

MS. SIMONSEN: Yes, Your Honor.

On the point about parental controls, and this goes back to the age verification as well, what plaintiffs, I think, are trying to do is say that -- that they're challenging like the absence of features, when what they are challenging are specific features; namely, the types of parental controls and age verification that Meta was utilizing on its platform.

And we confirmed for them that the parental control feature did not launch until much later. Certainly going back -- the notion that we would go back to 2006 for that does not make sense. Parental controls were launched on Facebook in 2023, and on Instagram in 2022.

And I can, you know, provide kind of similar dates when it

comes to age verification. I mean, on Instagram it was in December 2019 that it became mandatory for new account holders to provide their age. That would be the relevant, I think, start date for that particular feature.

I think 2013 is probably the earliest that it would be for Facebook. That would be when reporting and review and checkpointing started based on our investigation.

So, you know, I think -- with respect to parental controls and age verification, I think were covered by the 2012 and forward.

To address the remaining points, my colleague mentioned hashtags. That, again, is not a feature listed in their list of named features. To Your Honor's point, if that was something they were wanting discovery into as a feature, I don't know why they wouldn't have included it in a definition they included in 13 sets of RFPs that we negotiated extensively.

It's also not a feature that has once been mentioned by plaintiffs in any of the conferrals that we have had with them on these issues or in the letter briefing.

With respect to facial recognition, again, I don't know that face recognition *per se* -- that is not a named feature. What -- what -- it's just simply not a named feature. It's not something that they've pursued discovery into to date. Image filters is the closest thing I can think of that is -- maybe

maps onto that. Those were launched on Facebook in 2017, and on Instagram in 2018.

Geolocation, I do agree with my colleague on that one, it was 2010. We confirmed that with them in the course of our discussions, and so that is one that we've already agreed that we would go back for.

And with respect to CSAM, I think plaintiffs have taken the position that anything relating to the reporting of CSAM, including how Meta reported it to the National Center for Exploited and Missing Children [sic] is relevant. Their complaint focuses only on the ability for users to report CSAM, and that is the feature that Judge Gonzalez Rogers analyzed in her motion to dismiss decision.

The earliest date that we've been able to determine that Instagram users had the ability to report suspected CSAM or adult predator accounts specifically was 2012. So that should be the relevant start date for CSAM we would submit.

THE COURT: Is there a date for Facebook?

MS. SIMONSEN: I don't have a date -- I do not have a date for Facebook; but my understanding, based on the information we've been able to gather, is that it would likely be around the same date. It's something we can look into further and try to pin down. We have been working hard to try to pin that down.

MR. CARTMELL: Your Honor, we have 2010 for CSAM

filters -- or CSAM reporting protocols. And that is in our complaint and does apply.

MS. SIMONSEN: And I'm not sure -- is -- I would need to check. I don't know what that's referring to because, again, their complaint in places references reporting of CSAM to NCMEC by Meta. "NCMEC" is the abbreviation for the organization I mentioned.

But, again, the feature at issue is the ability for users to report CSAM and suspected predator accounts to Meta. And based on our investigation, we understand that it was 2012 that users were able to specifically report suspected CSAM or adult predator accounts.

MR. CARTMELL: May I respond?

Your Honor, with respect to CSAM reporting and age verification, parental controls, we allege in our -- in our pleadings that they knew about those potential requirements and features that could be implemented, considered them, and didn't -- didn't do them.

Our claim with age verification, with CSAM, is that they should have done it sooner and they didn't. It becomes relevant when it was something that they considered, and we believe that it was something they considered, and the negligence was that they didn't do it. And so those -- those are obviously relevant.

MS. SIMONSEN: And, Your Honor, discovery -- just to

respond on that point, discovery back to, say, 2012 on CSAM, back to January 1st of 2012 for CSAM, is going to pull in documents demonstrating that that particular ability to specifically report CSAM wasn't available prior to that time.

And so it should be sufficient to go back to the 1st of January. That gives them some lead time before the feature was actually launched -- right? -- to get documents discussing the development of that particular design feature. And, again, they're going to get discovery about that issue all the way through to April 1st, 2024. That should be sufficient.

Again, to Your Honor's point, if there's something specific from an earlier period of time they have reason to think they need, they can certainly come back to us.

I do think it's worth mentioning again, that expanding the time periods further back on these specific features is just going to jam us on the timeline we already have given, you know, we've already agreed to search terms returning 13.7 million documents.

I know we haven't had a chance to really talk to Your Honor about it because the parties reached agreement, but we increased the number of custodians we agreed to use from 48 to 127, which is a very large number of custodians by any measure for any litigation.

And so, you know, I think at some point, particularly given the advanced accelerated schedule these plaintiffs

requested, there has to be some reasonable limit on how far back in time some of this discovery can go.

THE COURT: Okay. So do you agree with Ms. Simonsen that what you're -- what you referred to as facial recognition tagging is what she referred to as image filters, or are you talking about different things?

MR. CARTMELL: Yeah, no. So image filters we have as 2010 on Instagram, and 2012 on Facebook, and that's both in our -- in our RFP definitions and in our complaint.

MS. SIMONSEN: Your Honor, we confirmed in the course of meet and confers that image filters launched on Facebook in 2017, and on Instagram in 2018. I didn't hear anything back from plaintiffs on that. This is the first I'm hearing that they had a different date that they thought that those were launched, but those dates have been confirmed through our investigation. I think it may actually be public that that's when those features launched.

MR. CARTMELL: If we have proof of that -- I mean, not that I won't take your word for it, but I'm just saying we have evidence that -- and we put it, I think, in our complaint -- that it was in 2010 and 2012. So we'd just like to confirm that. If we confirm that that's when it started and there was nothing beforehand, then, you know, obviously it is what it is and we'll be fine with that.

But, I mean, we had --

THE COURT: So I thought I was going to be able to go through all of them with you, but it sounds like you're going to need to meet and confer, so...

MS. SIMONSEN: It sounds to me like, just on the image filters -- although, I will say, again, Your Honor, we've been trying to reach resolution on these issues for some time. We shared this information with them. They didn't challenge it, so --

THE COURT: Okay. I hear what you're saying.

Okay. So -- and I don't remember if I said this. So for Facebook Chats it starts January 1, 2008.

Hashtags, January 1, 2011.

Image filters, it's going to start -- well, it will be subsumed in the general default because if -- it's going to start 2017.

If you have evidence that it started before then, I'm going to order you both to meet and confer and see if that date needs to be altered by agreement. And that's image filters/facial recognition tagging.

Age verification is going to start January 1, 2013. Again, this is based on the same representation by Ms. Simonsen that that's when it launched.

And, again, if you've got evidence that you think they considered it -- that it was something that was under consideration, but not implemented prior to that, and you want

to get discovery of that, I'm going to order you to meet and confer and see if you can, by agreement, alter that date. Okay?

The "likes" go back to January 1, 2009.

Parent controls, again, based on it's going to be subsumed by the default. It looks like you said 2023? Really?

MS. SIMONSEN: 2023 and 2022. Yes, Facebook 2023, and Instagram 2022.

THE COURT: So it's going to be the subsumed in the default. But, again, if you've got evidence that it really does go back to an earlier date, before 2012, because that's -- then you're free -- I'm going to order you to meet and confer and try to see if you can work that out.

Same thing, CSAM reporting. Again, because, Ms. Simonsen, I'm going to hold -- because you couldn't give me a date for Meta -- or for Facebook on that one, I'm going to give you January 1, 2010; right?

And then on geolocation, it looks like everybody agrees January 1, 2010. Okay?

MR. CARTMELL: Your Honor, on the age verification and the parent controls, just -- just so -- you know, to be clear, our claim is that they -- they were negligent all along and they didn't have them when they should have had. So when they started, we're saying, is way too late. And when they should have had them, it seems like that should be the date --

right? -- starting in 2006, when they had the opportunity to do it and didn't. That's what our -- that's what our experts are going to say. So --

THE COURT: The fact that they didn't have it in 2006, I mean, it's a negative. That's already in the record; right?

MR. CARTMELL: But that is -- that's why the feature-based program here is tough; right? Because we're claiming negligence, that they didn't do things they should have done. That's part of negligence, and it's relevant during the time period when they should have done it. And so our claim is --

THE COURT: I'm not foreclosing it. If you've got evidence that you think there are documents -- there's a universe of documents that predate 2013, for example, on age verification, or this specific subset of custodians who you think are critical to that that have documents preceding that, then I'm going to expect you to meet and confer and talk with Ms. Simonsen about, you know, trying to expand that date backwards in time, and I'm sure she'll be reasonable in discussing that with you. Okay?

Remember, I said these are default cutoffs -- right? -- and default means default; right?

If you can come up with a good reason or a reasonable reason, I expect the parties to work together collaboratively in trying to figure out if there's a reason to go back for

specific issues. Okay?

MR. CARTMELL: Can I ask about notifications? Was that included?

I apologize. I haven't taken great --

THE COURT: Notifications, January 1, 2011.

MR. CARTMELL: Okay. We have 2007.

MS. SIMONSEN: Notifications is another one we shared with them in advance. It was 2011 for Facebook, for Instagram 2012.

THE COURT: So, again, if you've got some evidence that you think it started or -- started before 2011, meet and confer.

MR. CARTMELL: Share it with them and meet and confer?

THE COURT: Yeah.

MR. CARTMELL: Okay, we'll do that, Your Honor.

I want to just, real quick, look and make sure we didn't miss anything.

User options -- oh, I think that's going to be the same -- the same thing, that it wasn't implemented until 2021, but our claim is that it should have been implemented earlier than that. Those are safety sort of safeguards that we're claiming.

All right. I think that covers what I have written down on my list, Your Honor.

THE COURT: Okay. So we've all got the transcript. I don't want to have to repeat all that. So if you need

clarification, please refer to the transcript on that. I assume you-all took good notes of the dates on each of these features.

Okay. In my mind, that resolves this dispute. Is there anything still open on this particular dispute?

MR. CARTMELL: I would --

MS. SIMONSEN: Nothing --

MR. CARTMELL: Go ahead. Sorry.

MS. SIMONSEN: Nothing from Meta's perspective.

I had a clarifying question with respect to the search term negotiations coming out of this, but nothing with respect to Your Honor's rulings.

MR. CARTMELL: One thing I would ask, Your Honor.

Ms. Simonsen mentioned that they have their search terms for this feature-based program. We would ask that they provide those to us today or --

THE COURT: Me too. Because you're going to work out search terms and be done with it by next Wednesday; right?

MR. CARTMELL: Right.

THE COURT: Yes.

MR. CARTMELL: So just as soon as possible today or tomorrow, if we could get that.

And the only other thing I have, Your Honor, is that --

THE COURT: Any objection to that?

MS. SIMONSEN: No, not at all.

THE COURT: All right.

MR. CARTMELL: The only other thing I have is that Mr. Van Zandt from the JCCP would like to say something about this topic.

MR. VAN ZANDT: Thank you, Your Honor. Joseph Van Zandt.

And I'm sure you're ready to move on, so I'll be very quick with this.

So in terms of the JCCP, I did just want to make a record on this. So Ms. Simonsen indicated that these are product liability claims in this case, which is not true for the JCCP. The JCCP is based on negligence claims.

And the JCCP is where an overwhelming majority of the plaintiffs -- personal injury plaintiffs at least -- are pending. 900 -- over 950 cases compared to, I think, 200-something here in the MDL.

So this -- a product-by-product or feature-by-feature ruling in terms of the relevance of discovery and going back would really hamstring the claims of the overwhelming majority of the plaintiffs in this litigation.

And Your Honor indicated that if we have specific evidence that relevant evidence exists for the time periods, it's hard to get more specific than the former president of the company in 2005, who left the company in 2005, indicating that they knew what they were doing to addict people to the platform and

they did it anyway.

He left the company in 2005, continued consulting with Mark Zuckerberg for the years after that. While he might have said the comments in 2017, his only knowledge as to what was happening would have been during that time frame that we're trying to get.

The plaintiffs aren't asking to go back that far for everyone. We're asking for a handful of custodians that would go back to the date they started employment with the company.

THE COURT: Mr. Parker is not there so there's no custodian. I mean, you could subpoena him personally, as an individual. You're free to do that. Because we're only talking party discovery here. If there are individuals who are out there who have left the company, and there are a lot of them, you're free to subpoena them.

This is just document discovery. You're certainly free to depose whoever you want to depose and get testimony. I'm not putting any limits on time frame -- for the subject matter time frame that you can ask questions on.

That's -- you know, if people -- I mean, obviously, you've got some public statements by people. You've got testimony by people from other cases or from Congress. There are plenty of ways to depose people on these issues without having to delve into the history, especially for people who aren't at the company anymore. I mean, I don't know how to get Mr. Parker's

documents at this point.

MR. VAN ZANDT: Right. And I'm sure we'll see to that. But the point is to the custodians who are still employed with Meta who were there at the same time Mr. Parker was, and would have been having these conversations with him -- including Mark Zuckerberg -- the evidence going back to the date that they joined the company is extremely critical to the core of the claims in both litigations, but especially the JCCP.

So we're asking for a narrow, narrow window of plaintiffs that would go back to the date -- to the date of initial employment. I mean, on the -- the entire custodian list, there was -- there's only 15 people on the entire custodian list that were employed there before 2010; and we're not asking for even all of those. We're asking for a limited universe of plaintiffs that would go back to the date that they started at the company, which we believe will generate incredibly important evidence on motive, intent, and knowledge, which are relevant to the claims in both those litigations.

THE COURT: And you don't think you're going to find when they run the custodial searches on those 15 people for documents going -- in some cases going back to 2008 or even 2000 -- yes, at least 2008, you're not going to find anything that's going to either help you point to something earlier?

MR. VAN ZANDT: That's certainly possible, but we --

there's no way we can know that. So it's -- we can't know how long before they launched a certain feature that they started discussing that feature. We know, at least from comments from Mr. Parker, again, the president in 2005, they're talking about creating a platform that keeps people coming back and gives people dopamine hits.

So when they -- when they planned out and mapped out when they were going to release certain features, they could have started discussing those two or three years prior. So the feature release date really doesn't give us the true background or the motive or intent or knowledge of what these features could do.

THE COURT: I've already balanced proportionality versus relevance there and decided that the January 1st of the year the feature comes out. I hear your argument. I've already considered it. Whatever year -- January 1st of the year the feature came out is the appropriate cutoff, I think, for this.

But, again, if you find something in the production or you find something in a deposition that leads you to earlier documents, you're free to ask a go-get-'em type or whatever follow up you need to get that. Again, as I said, these are default cutoffs and you can certainly do your work to try to get at earlier stuff if you really think it's that critical.

MR. VAN ZANDT: Thank you, Your Honor. We do think

it's critical and we've requested it, and understand your -- your instructions about that.

THE COURT: I'm not foreclosing you from trying to get at it; but, you know, let's take this -- try to -- I'm trying to get the first set of document requests done with so you can get going -- right? -- on this stuff. Right? And so that's where we are.

MR. VAN ZANDT: Okay. Thank you.

THE COURT: Okay.

MS. SIMONSEN: Thank you, Your Honor.

May I ask just one clarifying question with respect to search term negotiations?

THE COURT: Sure.

MS. SIMONSEN: I think we've talked through kind of the launch dates of these various features. Obviously, we're going to be going back further in time than we had planned for certain features. I think it would help in search term negotiations to have an understanding that Your Honor would endorse an approach where we go back to the date of launch for features launched after 2012. That would save us from, for instance, in the case of something that launched in 2017, you know, five years worth of running search terms over documents where the feature hasn't even launched yet.

I'd just like to know if Your Honor is sort of open to that approach. It's something that I certainly think we would

want to propose as a way to keep the volume something we can manage by September 20th.

MS. WALSH: Yeah, Your Honor. So we worked really hard to get this set of search terms that applies to the default cutoff date, which Your Honor has been very clear about. I think that that's part of Your Honor sort of balancing that between, you know, what Mr. Cartmell was asking for.

And the idea that now we would be going back into that and, first of all, entering into negotiations about what search terms actually apply to particular features and doing carve-outs in the period following is just really taking us backwards.

THE COURT: I'm not going to -- anything that -- you're not going to do feature-specific searches post the default cutoff. It's, A, I think it's going to be more complicated than it's worth; and, B, if it really was something launched, say, 5 to 10 years after the default cutoff date, the odds that it's going to be a burdensome or large universe of documents preceding that date is low. So I just don't think you're saving all that much, and you're actually adding complexity to the search.

MS. SIMONSEN: Yeah, just to maybe illustrate this a bit.

One of the search terms that we are in dispute over is a

search term that plaintiffs would like to run called "time spent," a very broad, very broad term, which we have offered to run back to the date that that particular feature on the platforms was launched as a way to be able to still give them a very, very broad term, but make the volume of documents coming back manageable.

I don't know if that changes Your Honor's guidance. I'm trying to think about ways that we can be creative on Meta's end to try to get to agreement.

THE COURT: Okay. So between now and when you finalize negotiations, if you've got specific terms where you think it reduces the -- both the burden but also it sounds like it reduces the possibility of irrelevant documents kind of being swept in prior to --

MS. SIMONSEN: Yes.

THE COURT: -- when the feature was launched, work -- try to work it out in negotiation. Certainly, I'm not going to bar you from implementing, you know, specific carve-outs if you want to agree to that --

MS. SIMONSEN: Yes.

THE COURT: -- but I'm not going impose it.

MS. SIMONSEN: Thank you, Your Honor.

MS. WALSH: Your Honor, I'd like to be heard just briefly on that because I do think this is important.

We have gone back and forth about this; and as I pointed

out to Ms. Simonsen in an e-mail this morning -- we've had a lot of e-mails back and forth -- is that -- two things:

One, the term of art that Meta chooses to use called "time spent" does relate to a feature. It also relates to a metric that has been in use; and that is something we have evidence for, that we have found evidence for in the documents produced thus far.

It is a metric that Meta cares very much about: How much time are they getting kids to spend on this platform?

Eyes on screens as long as possible.

"Time spent" is a term that they use and that they are very carefully tracking all of the time. So it's not just limited to a feature.

And I will say, Your Honor, I realize we're not going backwards in this argument, but this is relevant to a point that my co-counsel and colleague Mr. Cartmell was making. The time spent feature that they eventually finally -- after there was increasing public awareness outside the company about the harms of this platform, they finally put it into place so they could say, "Oh, we do stuff to protect kids."

They were talking about it for years. They were talking about it and not doing it.

And within the default cutoff date to prove our negligence claim, to prove our punitive damages claim, to help with our expert reports, we are entitled -- our clients, these kids, are

entitled to evidence of the safety features that they are not -- now touting that they discussed for years and failed to implement. And "time spent" is an example of that.

THE COURT: So if you can't agree on it, then you can't agree on it. I'm not forcing anyone, but I'm also not granting her any of the carve-outs that she wants.

MS. WALSH: I just wanted to make clear that -- that issue.

THE COURT: You can argue the merits of the case to Judge Gonzalez Rogers.

For purposes of discovery, all I'm saying is if there are specific examples of terms that can be cut off by date later than the default cutoff that both sides can agree to, then you should try to work that out. That's all I'm saying.

MS. WALSH: Certainly, Your Honor. Thank you.

MS. SIMONSEN: Thank you, Your Honor.

THE COURT: Anything -- I think that resolves 888.

So last is 8 -- is it 848? -- which is YouTube custodians.

We're down to two custodians for YouTube. Tell me you've worked it out. Right?

MS. WHITE: We tried, Your Honor. We've come a long way.

THE COURT: All right. Please announce yourselves for the record.

MS. WHITE: Lauren Gallo White with Wilson Sonsini on

behalf of YouTube and Google.

MS. SIEGEL: Audrey Siegel with Seeger Weiss on behalf of school district/personal injury plaintiffs.

THE COURT: Okay. And why can't you agree to Ms. -- I'm going to mispronounce it -- Wojcicki -- I think that's how she pronounces her name -- and Mr. Mohan?

MS. SIEGEL: So YouTube had originally taken the position that neither Wojcicki nor Mohan should be custodians.

I understand that they are now arguing that Mohan should be a custodian, but Wojcicki should not, and I will let -- we firmly believe that they should both be custodians.

I'm happy to go over it, but --

THE COURT: Okay. So there's no dispute as to Mr. Mohan now?

MS. WHITE: Not exactly, Your Honor. We think --

THE COURT: Okay. Darn it. Go ahead.

MS. WHITE: We have -- we have worked very hard and come very far and have agreed to a long list of custodians, including seven senior executives whose roles and responsibilities touch on the issues and features that are most relevant to plaintiffs' claims.

We don't agree that it is plaintiffs' -- of course, it is plaintiffs' burden to show relevancy and in this context where they are demanding even more custodians beyond those we've agreed to, they need to show that these two custodians would

have uniquely relevant documents or information, and they haven't done that.

And as to the CEO's, whose roles are incredibly broad, they touch on many -- they are aware of a wide variety of topics and issues guiding the corporate strategy even where they are not key decision-makers or even decision-makers. The burden of collecting from these two individuals is especially high.

So we believe that collecting documents from both Mr. Mohan and Ms. Wojcicki would be duplicative and disproportionate here. We, nonetheless, in an effort to reach compromise, because we have heard Your Honor's instructions, offered Mr. Mohan, the current CEO, in exchange for plaintiffs' agreement to drop Ms. Wojcicki. They, unfortunately, rejected that proposal.

THE COURT: Okay. So I understand from public reports that Ms. Wojcicki has stepped down as CEO. So who would be the -- I mean, does she retain her documents? You're talking about her as a custodian. I know she -- again, the public reports say she's an adviser to Google and Alphabet, but is she still with YouTube in any capacity?

MS. WHITE: She is not, Your Honor. She stepped down roughly a year and a half ago.

THE COURT: So when you're talking about her as a custodian, what are you actually talking about then? Is there

a repository for her documents?

MS. WHITE: There are. Ms. Wojcicki was subject to certain legal holds before she stepped down; but unlike Mr. Mohan, her documents won't cover the entire relevant time period up to the end date.

And during the relevant period, Mr. Mohan was effectively Ms. Wojcicki's right hand, and he was a senior executive going back all the way to 2011, which is the earliest start date -- for default start date for the search terms that YouTube -- Your Honor has ordered as to YouTube.

So we think that both of these individuals will be duplicative of the long list we've already agreed to; but at a minimum, one should be sufficient and the current CEO should be sufficient.

MS. SIEGEL: If I could respond to that.

So, first of all, our understanding is that YouTube and Google retain old employee e-mail addresses, old employee files, including on the shared drive and through e-mail, indefinitely; that they don't delete those.

So Ms. Wojcicki's files from that time period, which -- to the extent that they were saved and retained, should continue to be saved and retained. As my colleague mentioned, she also is probably subject to various litigation holds, which makes it likely that her file was retained.

Going beyond that, I -- there were several things that my

colleague mentioned that I think are inaccurate. So the first is that Mr. Mohan was at Google for a longer period of time, but we understand that he didn't move over to YouTube until November of 2015; whereas, Mr. Wojcicki began as CEO of YouTube in February of 2014. So that's over a year and a half of relevant time period in which Mr. Mohan's files simply would not provide that information.

THE COURT: So if I give you Ms. Wojcicki's files, why do you need Mr. Mohan's files?

MS. SIEGEL: So we need both files because, as to Mr. Mohan's files -- right? -- he covers the last year which Ms. Wojcicki -- sorry, that name is a little hard -- which Ms. Wojcicki does not cover. That's the first reason.

The second reason is that they are both key decision-makers, but Mr. Mohan was a key decision-maker as chief product officer related to products, user experience, and trust and safety, as we understand it. And so even if Ms. Wojcicki was part of his decisions, Mr. Mohan is likely to have more documents on those topics for the relevant time period.

And, lastly, because there's no reason to suspect -- you know, that the standard is not any higher looking at executives than looking at any other custodian, and the question is whether or not the custodian is likely to have relevant information or documents that are unique to their

file.

And Ms. Wojcicki and Mr. Mohan had separate roles. While they may -- and they were both key decision-makers on these issues; and while they may have had overlapping e-mails and overlapping documents, there's no reason to suspect that they would have exactly identical e-mails or documents. For example, Mr. Mohan may well have been communicating with other people working on engineering and products and user experience who are not custodians and on a one-on-one basis.

And aside from that, Google has a fairly short default retention period. I believe it's only approximately a year and a half, unless the e-mails are marked as retained. And so given that, there's a good chance that one of them may have a document -- may have -- even in e-mails exclusively between the two of them, there may be one who retained the document and one who had not retained the document.

And I can say that in *Shenwick vs. Twitter*, the court ordered the production of Jack Dorsey's records for the same basic reason. They said -- the court said even if -- even if -- they should have -- the fact that they might have identical documents at the front end doesn't necessarily excuse production where the custodian file is relevant because you don't know who will have deleted what, and one custodian could have handwritten notes or other notes to self.

And I would also note that there's not -- to the extent

that they are duplicative, there's not that much of a burden there because there's no problem for YouTube to just go and deduplicate the documents prior to review.

MS. WHITE: So, Your Honor, I'm hearing a lot of speculation in my friend's argument. I think their argument sort of boils down to the fact that they were CEOs; therefore, *ipse dixit*, they must have uniquely relevant information.

The circumstances in other cases, of course courts have ordered CEOs of other companies to be custodians in certain cases and they have rejected those requests in other cases.

In this case, all plaintiffs are pointing to is their titles. If plaintiffs, over the course of discovery, find something that suggests that Ms. Wojcicki has some uniquely relevant information that is not covered by the nearly 60 other custodians we've agreed to, of course we're willing to engage them on that; but at this point standing here today, I don't think they have met that burden.

MS. SIEGEL: I -- I strongly disagree with the characterization that we are merely speculating that because they're CEOs, they have relevant information.

In the first part, we did in our briefing in the appendix in the exhibit, we pointed to several sources demonstrating that Ms. Wojcicki does have knowledge on these topics. I mean, Ms. Wojcicki was CEO when Kids was launched in 2015; when digital well-being features was introduced in 2018; when

YouTube disabled comments to children's videos in 2019, due to predatory conduct; when YouTube was fined and agreed to pay $170 million by the FTC for COPPA violations, which are at issue in this case; when the -- when social media, Facebook, and YouTube first came under scrutiny following the publication of Facebook's files demonstrating knowledge of mental health defect -- mental health harm; and when YouTube first testified before Congress in October of 2021.

Ms. Wojcicki has publicly spoken on almost all of these topics, including in regular blog posts to YouTube. One of the ones we cited was where she was talking about this issue of COPPA violations and what was being done to prevent it.

In addition, Ms. -- this was not in the briefing because the briefing was, you know, quite extensive and listed a large number of custodians, but Ms. Wojcicki also was known to have created an *ad hoc* committee called "Roomba," which she would have meet to tackle these particular types of events. And that has a rotating group of members per issue, and so not including her as a custodian, we likely would not be able to see all these Roomba documents.

So I don't think that that's fair to say, that we're merely just saying that she's the CEO. That's not the case. She's been an active CEO and a key decision-maker on a lot of these issues.

THE COURT: Okay. So I'm going to order that

Ms. Wojcicki be added as a custodian. Particularly the fact that she's not there anymore, so there's no burden; I mean, it's just her repository of documents.

MS. WHITE: Well, your Honor, I dis- -- excuse me.

THE COURT: I'm ruling. Okay?

And Mr. Mohan took over as -- well, when she resigned -- as I recall, she resigned as CEO last year and Mr. -- so there must have been a transition. So you get -- I'm going to order that Mr. Mohan's files be searched as of January 1st, 2023, only -- all right? -- to avoid -- to address the proportionality and the risk of duplicativeness concern.

That's just a default cutoff. So, again, if you -- if there's something specific that happened before January 1, 2023, that you think Mr. Mohan has a uniquely -- you know, a unique set of documents on, I assume you're going to follow up and meet and confer with YouTube's counsel and you're going to work collaboratively on working that out if possible. Okay?

MS. WHITE: Of course, Your Honor. We will continue to work collaboratively.

If I may just respond to the observation that it would not be burdensome to collect these documents.

We obviously disagree. Ms. Wojcicki had general awareness of many, many issues such that the search term -- broad search terms we've agreed to are likely to hit on a very, very large volume of documents, not to mention the privilege.

I'd ask that Your Honor consider shifting the costs of reviewing Ms. Wojcicki's documents to the extent, as we believe to be the case, they will be duplicative of those of the custodians we've already agreed to.

THE COURT: You mean shifting, like shifting the costs to the plaintiffs?

MS. WHITE: Shifting the costs to the plaintiffs, correct.

THE COURT: No, I'm not going to do that.

MS. WHITE: Thank you, Your Honor.

THE COURT: We follow the American rule here. So it's your -- it's your client's documents. It's your -- it's your burden to review them.

Now, you can try to come up with some agreement on, you know, a more generous clawback provision so that you can -- you don't have to worry so much about privilege if that will help reduce the burden. I assume the plaintiffs will be reasonable in trying to work out something to reduce the burden there if privilege is a real concern.

MS. WHITE: We appreciate that.

MS. SIEGEL: Thank you.

THE COURT: All right.

MS. WHITE: Thank you.

THE COURT: Okay. So that handles -- that takes care of, I think, all the ripe disputes. So at this point, I don't

think there's any reason to talk about the unripe disputes; but is there anything anybody wants to raise at this juncture?

MS. HAZAM: Not from plaintiffs, Your Honor.

THE COURT: The Defense?

MR. SCHMIDT: Not for defendants, Your Honor.

Paul Schmidt for Meta.

THE COURT: Okay. We -- there's a couple of cleanup issues that -- so because of the way the schedule works next month with the holiday, we've moved up the DMC to coincide with the change in date to the CMC. So I just remind you the DMC next month is on July 11th, which isn't that far away.

But because of the holiday, what I would ask is that the parties submit the DMC status report -- right? -- on -- by noon, by noon on July 3rd. By noon on July 3rd. So nobody has to work over the holiday getting it to us, so we'll have it right before the holiday.

Okay. I could give you -- if you don't think it's -- if you think it's burdensome because people are going to be traveling on the 3rd, I could do it due on end of day on the 2nd, if you prefer. I give you that option.

Who's going to be working on and who's going to be burdened by working on July 3rd?

MS. HAZAM: Your Honor, Lexi Hazam for plaintiffs.

It probably isn't me as much as it is others, but plaintiffs would be amenable to the end of the day on the 2nd.

MS. SIMONSEN: Defendants would as well. Thank you, Your Honor.

THE COURT: Okay.

MS. HAZAM: Thank you, Your Honor.

THE COURT: People are traveling for the 4th of July. So okay. So DMC statement due by end of day on July 2nd.

And then, we seem to keep talking about this at every hearing, Docket Number 891 was a temporary sealing motion with regard to one of the discovery letters to me; but under the protocol, you-all were supposed to file an omnibus sealing motion after the temporary sealing motion. And in the docket, we didn't see an omnibus sealing motion, and it should have been due around the first week of June, if you follow the deadlines in the protocol. So I just -- can you just take care of that?

MS. HAZAM: Yes, we will, Your Honor.

THE COURT: Okay. So, again, it's -- 891 was the temporary sealing motion, and there should have been an omnibus sealing motion following that.

I was thinking of having you bring your lead paralegals in so I could talk to them about sealing motions, but pass that message along.

Okay. So I think that's everything on the administrative kind of logistics side.

Anything -- anything from the plaintiffs?

MS. HAZAM: Nothing further, Your Honor.

THE COURT: Anything from the defense?

MS. SIMONSEN: Nothing further, Your Honor. Thank you.

THE COURT: We're adjourned to July 11th.

MS. HAZAM: Thank you.

THE CLERK: We're off the record in this matter. Court is in recess.

(Proceedings adjourned at 3:18 p.m.)

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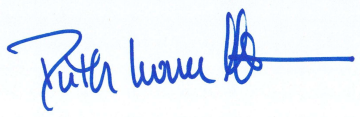
CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Sunday, June 23, 2024



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